

SERVICE DATE - DECEMBER 20, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34286

FORT WORTH AND WESTERN RAILROAD COMPANY, INC.—
ACQUISITION AND OPERATION EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

[REQUEST FOR WAIVER OF 49 CFR 1150.42(e)]

Decided: December 19, 2002

By request filed on December 12, 2002, Fort Worth and Western Railroad Company, Inc. (FWWR), seeks a waiver of the requirements of 49 CFR 1150.42(e)¹ to permit the exemption it is seeking in this proceeding to become effective without awaiting the expiration of the 60-day notice period, measured from the date of certification to the Board, specified in section 1150.42(e). The waiver request will be granted.

On December 6, 2002, FWWR, a Class III rail carrier, filed a verified notice of exemption (verified notice) under 49 CFR 1150.41 to acquire and operate, through a supplemental lease agreement, approximately 6.92 miles of rail line from Union Pacific Railroad Company (UP). The rail line, known as the Everman Industrial Lead, extends from the clearance point near milepost 244.98 in UP's Ginnie Yard to the end of the line near milepost 251.90, including the Carter Industrial Park spur, in Fort Worth, TX. The verified notice also includes acquisition of non-exclusive rights to use and operate approximately .60 miles of incidental trackage rights accessing the Everman Industrial Lead over UP main lines, solely for the purpose of interchanging traffic between the parties through UP's

¹ "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so."

Peach Yard in Fort Worth, TX.² According to the verified notice, FWWR intended to consummate the transaction on December 15, 2002.

FWWR states that the projected revenues of the rail lines to be acquired in this proceeding, together with the projected annual revenue of FWWR, will exceed \$5 million. Therefore, as required by 49 CFR 1150.42(e), FWWR states that it posted notice of its intent to undertake the proposed transaction at the workplace of the employees on the rail line and served a copy of the notice of intent on the national offices of the labor unions representing the employees on the line on October 4, 2002. Because of delays in completing the paperwork necessary to file the verified notice, however, FWWR did not certify to the Board that it had complied with the requirements of 49 CFR 1150.42(e) until December 6, 2002. Consequently, in order to consummate the transaction as soon as possible, FWWR seeks waiver of 49 CFR 1150.42(e) insofar as it relates to certifying to the Board that it has complied with the requirements at least 60 days prior to closing.

FWWR states that the notice of intent offers no new jobs on FWWR and did not indicate that any UP employees would be adversely affected. Because affected employees and their labor unions have had more than the 60 days' notice required by the regulations, FWWR submits that no interested party, including employees and their unions, would be adversely affected by waiving the 60-day certification rule to allow it to consummate the transaction as soon as possible.

DISCUSSION AND CONCLUSIONS

FWWR's waiver request is reasonable and will be granted. The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected (especially through job loss) by the transfer of a line are given sufficient notice of the transaction before consummation.³ The responsibility to provide the general notice rested on FWWR. We take seriously the requirements of the rule and caution FWWR to comply fully with those requirements in the future. Here, however, the record does show that notice was provided to employees working on the rail line and on the national offices of the labor unions representing those employees on October 4, 2002, more than 60 days prior to the intended consummation date. Thus, under the circumstances, granting the requested waiver would not be inconsistent with the objectives in adopting the 60-day notice requirement.

² The agreements supplement existing lease and trackage rights agreements between the parties involving UP's Peach Yard in Fort Worth, TX. See Fort Worth and Western Railroad Company, Inc.—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34131 (STB served Nov. 15, 2001).

³ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice, 2 S.T.B. 592 (1997).

Accordingly, with respect to this transaction, we will waive the remainder of the 60-day requirement, as measured from the certification date to the Board. As a result, the exemption in this proceeding will become effective on the date of service of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. FWWR's waiver request is granted.
2. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams
Secretary